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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

FURTHER NOTICE OF PROPOSED RULEMAKING AND REPORT AND ORDER

Adopted: February 14, 2002 **Released: February 26, 2002**

Comment Date: 30 days from publication in the Federal Register
Reply Comment Date: 45 days from publication in the Federal Register

By the Commission: Chairman Powell and Commissioner Martin issuing separate statements.

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I. INTRODUCTION

1. In 1997, the Commission adopted a system under which telecommunications providers contribute to universal service based on their end-user revenues.[1] Since that time, the

[1] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797 para. 39-40 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied* 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) (*Universal Service Order*).

telecommunications marketplace has changed rapidly and technologies have evolved, with major developments including increased competition, migration to new products and services, and bundling of traditionally distinct services. These trends could erode the contribution base over time. In light of these trends, the Commission began a proceeding to revisit its universal service contribution methodology in May 2001.[2] Commenters have submitted a range of innovative ideas and proposals for reforming the current system, while others assert that the status quo should be maintained. We now seek to further develop the record on some of these proposals.

2. In the Further Notice of Proposed Rulemaking (Further Notice), we seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters.[3] We seek comment on whether a connection-based assessment approach would ensure the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications marketplace. We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding proposals to retain or modify the existing revenue-based system.[4] In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

3. In the attached Report and Order, we adopt certain modifications to the existing system. Based on examination of the record, we conclude that these modifications are warranted because they will streamline and improve the current system without undue disruption while we consider other, more substantial reforms.

4. Whereas this proceeding concerns the Commission's methodology for assessment and recovery of universal service contributions generally, we seek comment in a companion proceeding on a different but related issue: in an evolving telecommunications marketplace, should facilities-based broadband Internet access providers be required to contribute to support universal service and, if so, on what legal basis?[5] That proceeding explores this question by seeking comment on what universal service contribution obligations providers of facilities-based broadband Internet access should have as the telecommunications market evolves, and how such obligations can be administered in an equitable and non-discriminatory manner. Commenters should be mindful of the relationship between this proceeding and the *Broadband NPRM* proceeding and, where appropriate, should address interrelated issues raised by the proposals

[2] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (*2001 Notice*).

[3] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[4] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues; APCC, Excel, Iowa Utilities Board comments supporting assessment on projected revenues.

[5] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (*Broadband NPRM*).

detailed below.

II. OVERVIEW

5. Prior to passage of the Telecommunications Act of 1996, the Commission and the states oversaw a variety of explicit and implicit subsidy programs designed to reduce the cost of telecommunications services for consumers living in high-cost areas and for eligible low-income consumers. Universal service for high-cost areas helped to ensure that consumers in those areas paid rates for services comparable to those paid by consumers in low-cost areas, and the low-income program helped to make services more affordable for low-income consumers. Ensuring the affordability and availability of telecommunications services benefited consumers, and continues to do so, by increasing subscribership levels and, consequently, the value of the Nation's communications network.

6. In section 254 of the Telecommunications Act of 1996, Congress further codified the Commission's historic commitment to ensuring the affordability and availability of telecommunications services for all Americans.[6] Specifically, section 254(d) provides that federal support mechanisms should be specific, predictable, and sufficient to preserve and advance universal service, and that telecommunications providers should contribute on an equitable and nondiscriminatory basis.[7] The Commission implemented the current contribution system in 1997.[8] This system has two distinct but related components: the assessment of contributions on telecommunications providers; and the recovery of contribution payments by providers from their customers. Contributors are assessed on the basis of their interstate and international end-user telecommunications revenues, based on a percentage or "contribution factor" that is calculated every quarter.[9] The Commission recognized in 1997 that contributors likely would recover their contributions to universal service from their end users, although they are not required to do so.[10] Contributors are permitted to do so in any equitable and non-discriminatory manner. Many contributors elect to recover their contributions from their customers through a line-item fee, while others do not have a specific line item to recover the costs and instead recover them through their rates. As discussed below, in considering possible reforms to the universal service contribution system, we may determine that it is appropriate to modify the assessment and/or the recovery components.

7. Over the last few years, important changes have occurred in the interstate telecommunications marketplace.[11] Interstate revenues grew consistently between 1984 and 1997, when the current contribution system was adopted, and such growth was expected to

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Act). 47 U.S.C. §§ 151 *et seq.*

[7] 47 U.S.C. § 254(d). The Act provides that "every telecommunications carrier that provides interstate telecommunications services shall contribute," and permits the Commission to require "any other provider of telecommunications" to contribute if the public interest so requires. *Id.*; *see infra* paras. 64-68.

[8] *Universal Service Order*, 12 FCC Rcd at 8797 paras. 39-40.

[9] 47 C.F.R. § 54.709(a).

[10] *Universal Service Order*, 12 FCC Rcd at 9211-12 para. 855.

[11] *See 2001 Notice*, 16 FCC Rcd at 9899-00 paras. 12-13.

continue. Recently, however, interstate revenues have declined for interexchange carriers,[12] which are now responsible for contributing approximately 63 percent of federal universal service funding.[13] Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. If the current methodology is not modified or replaced, this trend could erode the contribution base over time, requiring increases in the contribution factor to maintain current levels of universal service support.

8. We also have observed broader fluctuations in the contribution base. The Common Carrier Bureau recently reported that annual end-user switched interstate telecommunications revenues declined in 2000, the first time since such data has been compiled.[14] We also observed a decline in assessable revenues in the first half of 2001.[15] One analyst projected that United States long distance revenues would decline 12 percent in 2001.[16]

9. Competition in the interexchange market continues to increase. For example, Regional Bell Operating Companies (RBOCs) increasingly are providing interstate long distance service. To date, the Commission has granted RBOCs approval to offer in-region interLATA service in nine states: Arkansas, Connecticut, Massachusetts, Missouri, New York, Pennsylvania, Kansas, Oklahoma, and Texas.[17] One analyst recently reported that Verizon and SBC already have captured 25 percent of the long distance markets in New York and Texas, respectively.[18] Verizon recently reported that it is the fourth-largest residential long distance provider in the nation based on subscriber market share.[19]

[12] *See, e.g.*, AT&T Corp., S.E.C. Form 10-Q, filed Aug. 14, 2001 (consumer services revenue declined 22.1%, or $2.2 billion, for the first six months of 2001 compared with the corresponding period in 2000) (*AT&T 2nd Quarter 2001 10-Q*); WorldCom Inc., S.E.C. Form 10-Q, filed Aug. 14, 2001 (consumer revenues, which include domestic voice communications service for consumer customers, for the first six months of 2001 decreased 6.6% over the prior year period). Sprint, on the other hand, reports modest year-to-date increases in its long distance revenues. Sprint Corp., S.E.C. Form 10-Q, filed Aug. 14, 2001 ("In the 2001 year-to-date, sales of consumer long distance services increased reflecting the success of bundled services").

[13] *See* Telecommunications Industry Revenue Report: 2001, Industry Analysis Division, Table 14 (rel. Jan. 2002).

[14] We note that revenues declined in the first half of 1999, but increased overall for the year.

[15] *See, e.g., Proposed Fourth Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 16281 (Com. Car. Bur. 2001) (second quarter 2001 estimate of interstate and international end-user telecommunications revenues of $19.597 billion) (*Fourth Quarter 2001 Contribution Public Notice)*; *Proposed Third Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 11990 (Com. Car. Bur. 2001) (first quarter 2001 estimate of interstate and international end-user telecommunications revenues of $20.141 billion) (*Third Quarter 2001 Contribution Public Notice*). We note, however, that assessable revenues increased in the third quarter of 2001. *See Proposed First Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 21329 (Com. Car. Bur. 2001) (*First Quarter 2002 Contribution Public Notice*).

[16] *See* COMMUNICATIONS DAILY, September 27, 2001, at 5 (citing Solomon-Wolff Associates report).

[17] Under section 271 of the Act, RBOCs are permitted to provide out-of-region interLATA long distance services. *See* 47 U.S.C. § 271.

[18] *See* Jeff May, *If you can't beat 'em, join 'em – AT&T is discussing a merger with some of its Baby Bell offspring*, THE STAR-LEDGER, Sep. 30, 2001 (quoting F. Drake Johnstone, an analyst with Davenport and Co.).

[19] *See Verizon Ranks Highest Among Residential Long-Distance Providers in Overall Customer Satisfaction Ratings*, BUSINESS WIRE, Dec. 3, 2001. Verizon recently reported, for example, that it has 2.13 million long (continued....)

10. Because the current contribution system is based on historical revenues, some commenters contend that it creates competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining revenues.[20] Under the current system, contributors are assessed on revenues that they earned six months earlier.[21] As a result, contributors with increasing revenues recover contributions from a larger revenue base than the one on which they are assessed, and can pass through to their customers lower fees than competitors with declining revenues, who must recover their contributions from a declining revenue base. New entrants also may be able to undercut the prices offered by established service providers who already contribute to universal service, because they do not contribute for the first six months that they provide service due to their lack of historical revenues for that period.

11. In addition, the growth of Commercial Mobile Radio Service (CMRS) appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers.[22] Since the current assessment system was adopted in 1997, mobile telephony[23] subscribership has increased from 55.3 million to 109.5 million subscribers, and average customer minutes of use have increased from 117 minutes per month to 255 minutes per month.[24] Consistent with these trends, mobile service is becoming a substitute for traditional wireline services such as payphones and second lines to the home,[25] and there is a small but growing number of customers who have substituted mobile wireless for their primary residential

(...continued from previous page)
distance customers in New York and 475,000 in Massachusetts. *See* Mary Greczyn, *Verizon Revenue Rises, Although Economy, Attacks Trim Profits*, COMMUNICATIONS DAILY, Oct. 31, 2001.

[20] *See, e.g.*, ASCENT Comments at 4-5; AT&T Comments at 9; AT&T Wireless Comments at 4-5; Excel Comments at 6.

[21] *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (*Quarterly Reporting Order*). The Commission recently reduced the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues from 12 months to 6 months. *See infra* para. 27.

[22] *See* Shawn Young, *More Callers Cut Off Second Phone Lines for Cell Phones, Cable Modems*, THE WALL STREET JOURNAL, Nov. 15, 2001, B1 ("'Wireless substitution is now a fact,' says BellSouth Chairman and Chief Executive Duane Ackerman."). Another report states that migration to mobile services is reducing interexchange carrier minutes and revenues. *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht). In this Further Notice, we use the term "mobile wireless" to refer to CMRS providers and not fixed wireless providers.

[23] "Mobile telephony" refers to two-way mobile voice service provided by cellular, broadband Personal Communications Service (PCS), and digital Specialized Mobile Radio (SMR) operators. It does not include other services classified as CMRS, such as paging. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, 13354 n.8 (2001) (*Sixth CMRS Competition Report*).

[24] *See id.* at 13372; *see also Bureau Chief & Division Presentation on the Adoption of the Sixth Annual Report on State of Wireless Industry Competition*, Thomas Sugrue Opening Remarks, June 20, 2001, available at <http://wireless.fcc.gov/statements/010620cmrsSugrue_slides.ppt>.

[25] *See id.*; Shawn Young, *More Callers Cut off Second Phone Lines for Cellphones, Cable Modems*, THE WALL STREET JOURNAL, Nov. 15, 2001, at B1.

lines.[26] In addition, many customers are using their mobile service rather than interexchange service to make long distance calls: according to one report, 16 percent of customers surveyed now make most of their long distance calls using mobile services.[27] In some areas, such "technology substitution" has begun to erode revenue from interexchange services, which is currently the primary contribution source for universal service funding.[28]

12. Since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based. For example, carriers increasingly are bundling services together in creative ways, such as by offering flat-rate packages that include both local- and long-distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly nationwide, network without incurring roaming or long distance charges.[29] A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans.[30] At the end of 2000, approximately 20 million mobile wireless telephone customers subscribed to calling plans that do not charge extra for long distance.[31] The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment.

13. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system.[32] Additional legal, technological, and market developments that we cannot

[26] *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13381 (According to a recent survey by the Yankee Group, about 3% of mobile telephone subscribers rely on their wireless phone as their only phone); *see also* Yuki Noguchi, *More Cell-Phone Users Cut Ties to Traditional Service*, WASHINGTON POST, Dec. 28, 2001, at E1, E5 ("2.2 percent of people in the United States have done away with their regular phone service and depend totally on their cell phones or other wireless devices").

[27] *See The Surveys Say Majority of U.S. Households Use Wireless Phones*, WIRELESS TODAY, Sep. 10, 2001. One analyst estimates that 20% of all outbound mobile voice minutes are used for long distance. *See* Michael Rollins, *et al.*, *Wireless by the Minute*, Equity Research, Salomon Smith Barney, Jan. 8, 2001, at 8. Sprint PCS and other mobile wireless providers market their nationwide networks as a long distance alternative. *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13382-83.

[28] *See id.* at 13381-83.

[29] Paul Kagan Associates, Inc., *National Order-Rate Plans Take Off*, WIRELESS MARKET STATS, Jun. 16, 2000, at 11; *see Sixth CMRS Competition Report*, 16 FCC Rcd at 13379-80.

[30] *See* Deborah Mendez-Wilson, *Big Carriers Get Personal With Regional Calling Plans*, WIRELESS WEEK, Feb. 26, 2001, at 12; *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13380.

[31] *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht); *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13382-83.

[32] *See* United States General Accounting Office, *Federal and State Universal Service Programs and Challenges to Funding*, GAO-02-187, at 21-23 (rel. Feb. 2002) ("IP Telephony may not be an immediate threat to federal funding of universal service but may threaten its long-term viability."); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11508 para. 14 , 11541 para. 83 (1998) (*Report to Congress*).

foresee also could significantly impact the universal service contribution base.

14. In light of these and other changes in the telecommunications marketplace, we have recognized the need to review the current system for assessing universal service contributions. Fifty-nine parties filed comments in response to the *2001 Notice*.[33] Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken.[34] Some commenters support retention of the current revenue-based assessment system.[35] Other commenters support modifying the current system, for example, by assessing contributions on projected or current revenues rather than historical revenues.[36] Still other commenters support replacing the current revenue-based assessment system with one that focuses on connections.[37]

15. Our primary goal in considering possible reforms of the current assessment system is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of complying with universal service obligations. Achievement of these goals, in turn, should benefit consumers by helping to ensure that the contribution recovery process is fair, reasonable, and readily understood by consumers.

16. In this Further Notice, we seek comment on whether to base contributions not on a contributor's revenues, but on the number and capacity of the connections it provides to a public network.[38] Under this proposal, contributions for residential, single-line business, and mobile wireless connections would be assessed on a flat, monthly basis. Contributions for multi-line business connections would be calculated to recover the remaining universal service funding needs, based on the capacity of the connections provided. In addition, we seek comment on a variant of a connection-based assessment methodology that would maintain the relative contribution burdens on different industry segments.[39] We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing system.[40]

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[33] Appendix B sets forth a list of parties that filed comments and reply comments.

[34] *See, e.g.,* AT&T Comments at 13; C&W Reply Comments at 4; CDD Comments at 7; Excel Comments at 6; Nextel Comments at 6; Qwest Comments at 3; SBC Comments at 4; Texas OPC and SFA Comments at 7; Verizon Comments at 5; WorldCom Comments at 14.

[35] *See generally* CTIA, Home, SBA, Time Warner, Verizon, and Verizon Wireless comments supporting retention of the current revenue-based assessment system.

[36] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues, Qwest comments supporting assessment on net-booked revenues, and APCC, Excel, and Iowa Utilities Board comments supporting assessment on projected revenues.

[37] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[38] *See* Letter from Patrick H. Merrick, Esq., AT&T, to Magalie Roman Salas, Federal Communications Commission, filed Nov. 14, 2001 (*USF Coalition Ex Parte*).

[39] *See* Sprint Comments at 8-9.

[40] *See* APCC Comments at 2; Excel Comments at 7; Iowa Utility Board Comments at 2.

17. As discussed in more detail below, a connection-based assessment may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. Such an approach also may provide contributors with greater certainty, reduce administrative costs, and avoid marketplace distortions, ultimately benefiting consumers. Moreover, by eliminating some of the complexity involved with contribution recovery fees and making only one provider responsible for contributing based on a single connection, a connection-based assessment also may make the recovery process more understandable for consumers. Furthermore, by reducing costs associated with the recovery of contributions, a connection-based assessment also may reduce the total amount that consumers pay in contribution recovery fees.

18. Our experience over the last few years also has led us to reevaluate carrier recovery practices. Carriers currently have the flexibility to recover their contribution obligations in any manner that is equitable and nondiscriminatory. Some elect to recover their contributions from their customers through line-item charges, while others elect to collect their contribution requirement through their rates. Although the contribution factor is uniform for all contributors, universal service line items to consumers may vary widely among contributors, and often significantly exceed the amount of the contribution factor.[41] For example, in the second quarter of 2001, after the Commission established a contribution factor of 6.882 percent,[42] one interexchange carrier raised its residential universal service line item to 12 percent.[43] That carrier's residential line item was subsequently reduced to 9.9 percent. Another interexchange carrier increased its residential line item to 11.5 percent on January 1, 2002, even though the contribution factor recently decreased from 6.918 in the fourth quarter to 6.808 percent in the first quarter.[44]

19. Some carriers also employ different recovery methods for different customer groups, imposing universal service line-item charges on certain categories of presubscribed customers, but recovering an undisclosed amount from other customers through per-minute service rates. For example, some carriers do not recover universal service contributions from certain categories of customers, such as dial-around customers.[45] In addition, universal service line-item percentages for residential customers often are higher than those for business customers.[46] Other carriers charge customers large, up-front universal service fees that are

[41] *See 2001 Notice*, 16 FCC Rcd at 9895 para. 5. For a comparison of contributor universal service line-item amounts, *see* <http://www.abtolls.com/compare/fees/fees.html>.

[42] *See Proposed Second Quarter 2001 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 5358 (Com. Car. Bur. 2001).

[43] MCI WorldCom Tariff F.C.C. No. 1, Section C 1.061212, issued March 22, 2001.

[44] *See* Letter from Robert Quinn, Jr., AT&T, to Magalie Roman Salas, Federal Communications Commission, filed Dec. 13, 2001 (*AT&T Projected Revenue Request*); *see also* Jonathan Cox, *AT&T Will Raise Users' Phone Bills Unless U.S. Acts*, BLOOMBERG NEWS, Dec. 17, 2001. AT&T asserts that this is due to its decline in revenues and an assessment system based on historical revenues.

[45] *See* Susan McGovern, *AT&T Boosts Subscriber Charges to Recoup USF Contributions*, TR DAILY, Jan. 3, 2002, at 3.

[46] *See 2001 Notice*, 16 FCC Rcd at 9895 para. 5.

unrelated to their revenues from a customer.[47] Such practices may be inexplicable to the casual observer, and may shift a disproportionate share of the cost of contributions onto certain customer classes.

20. In this Further Notice, therefore, we seek comment on how to modify our rules to ensure that carriers that elect to recover their universal service obligations from their customers do so in a manner that is reasonable, fair, and understandable. In particular, we seek comment on whether to require carriers that elect to recover through separate universal service line-item charges on any customer bill to apply a uniform line item on all customer bills. To further develop the record in the *Truth-in-Billing* proceeding, we also seek comment on whether to require carriers to describe such line-item charges on customer bills as the "Federal Universal Service Fee."[48] We seek comment on whether these proposals would help to prevent consumers from being charged excessive universal service fees, to make the recovery process more understandable for consumers, and to ensure that carriers do not recover more from certain customers or classes of customers than from others. We also seek comment on whether the proposed reforms would place significant administrative or financial burdens on contributing carriers and on the potential benefits and costs for consumers.

21. Finally, in the attached Report and Order, we adopt modifications to the current contribution assessment system that will further reduce administrative burdens for contributors and maintain the predictability and sufficiency of universal service funding during the period while we consider other, more substantial changes to the system. First, we eliminate circularity in our current assessment methodology by excluding universal service contributions from the revenue base on which contributors are assessed. Second, we streamline our rules to permit affiliated contributors that function as a single unit to report revenue data on a consolidated basis. Finally, we increase the threshold for our limited international revenue exception from eight to 12 percent.

III. BACKGROUND

22. In the *Universal Service Order*, the Commission decided to assess contributions on contributors' gross-billed end-user telecommunications revenues.[49] The Commission did so after considering the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) and the record developed at that time.[50] Specifically, the Commission concluded that assessment based on end-user telecommunications revenues would be competitively neutral, would be easy to administer, and would eliminate some economic distortions associated with an

[47] Under one carrier's surcharge, a customer that makes a $0.19 one minute call would be charged a $1.20 (or over 600%) universal service fee. For examples of such practices visit <http://www.1010phonerates.com>.

[48] *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*TIB Order and FNPRM*), *reconsideration granted in part*, Order on Reconsideration, 15 FCC Rcd 6023 (2000), Errata, 15 FCC Rcd 16544 (Com. Car. Bur. 2000).

[49] *See Universal Service Order*, 12 FCC Rcd at 9206 para. 844. Section 254(d) of the Act mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." *See* 47 U.S.C. § 254(d).

[50] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996).

assessment based on gross telecommunications revenues.[51] At that time, the Commission declined to adopt a non-revenue-based methodology for assessing contribution obligations, expressing concern that such a methodology would require the adoption of "equivalency ratios" for calculating the contributions of providers that do not offer telecommunications on a per-line or per-minute basis.[52]

23. The Commission also declined to adopt a mandatory end-user surcharge for recovery of universal service contributions by telecommunications providers, agreeing with the state members of the Joint Board that a mandatory end-user surcharge "would dictate how carriers recover their contribution obligations and would violate Congress's mandate."[53] The Commission expressed concern that mandating recovery through an end-user surcharge might affect contributors' flexibility to offer, for example, bundled services or new pricing options, possibly resulting in fewer options for consumers.[54] Instead, the Commission allowed contributors to decide for themselves whether, how, and how much of their universal service contributions to recover from their customers.[55] The Commission required only that contributors not shift more than an equitable share of their contributions to any customer or group of customers, and that contributors provide accurate, truthful, and complete information regarding the nature of the charge.[56]

24. In the *Second Order on Reconsideration*, the Commission set forth the specific method of computation for universal service contributions.[57] The Commission also designated the Universal Service Administrative Company (USAC) as the entity responsible for administering the universal service support mechanisms, including billing contributors,

[51] *Universal Service Order*, 12 FCC Rcd at 9206-09 paras. 844-50.

[52] *See id.* at 9201 para. 852.

[53] *See id.* at 9210-11 para. 853.

[54] *See id.*

[55] *Id.*

[56] *Id.* at 9199 para. 829, 9211 para. 855. We note that the Commission originally prohibited incumbent local exchange carriers from recovering universal service costs from end-users, and instead required incumbent local exchange carriers to recover universal service costs through access charges. *See id.* at 9200 para. 830. The United States Court of Appeals for the Fifth Circuit held that incumbent local exchange carrier recovery of universal service contributions through access charges constituted an implicit subsidy, and the Commission's rules permitting that practice to continue at an incumbent local exchange carrier's discretion violated section 254(e) of the Act. *See COMSAT Corp. v. FCC*, 250 F.3d 931, 938-40 (5th Cir. 2001). The Commission therefore amended its rules to prohibit local exchange carriers from recovering contributions to the universal service mechanisms through access charges imposed on interexchange carriers. *See* 47 C.F.R. § 69.4(d).

[57] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc, CC Docket No. 97-21, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*); *see also* 47 C.F.R. § 54.709. Section 54.709(a) provides, in relevant part, that contributions to the universal service support mechanisms shall be based on contributors' interstate and international end-user telecommunications revenues and a contribution factor determined quarterly based on information submitted by the Administrator of the fund, the Universal Service Administrative Company (USAC). The quarterly contribution factor is based on the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues. Thus, contributions are the product of a contributor's end-user telecommunications revenues multiplied by a quarterly contribution factor that is equal to the ratio of total projected quarterly expenses of the universal service support mechanisms to total end-user telecommunications revenues.

collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.[58] To collect information from contributors about their end-user telecommunications revenues, the Commission required contributors to submit to USAC a Telecommunications Reporting Worksheet (Worksheet) semi-annually. Contributions were based on billed end-user telecommunications revenues from the prior year.[59] Therefore, the interval between the accrual of revenues by contributors and the assessment of universal service contributions based on those revenues was 12 months.[60]

25. In the *Truth-In-Billing* proceeding, the Commission adopted guidelines requiring carriers to use full and non-misleading labels on telephone bills that refer to line-item charges associated with federal regulatory action.[61] The Commission focused primarily on three types of line-item charges that result from federal regulatory action: (1) universal service-related fees; (2) subscriber line charges; and (3) local number portability charges.[62] The Commission adopted truth-in-billing principles and guidelines to improve consumers' understanding of their telephone bills. In the *TIB Order and FNPRM*, the Commission sought comment on specific standard labels to be used on bills when referring to various line-item charges relating to federal regulatory action, including charges attributed to the universal service fund.[63]

26. In the *Sixteenth Order on Reconsideration*, the Commission further refined the method for calculating universal service contributions.[64] Specifically, in response to a decision of the United States Court of Appeals for the Fifth Circuit, the Commission modified the methodology for assessing contributions for the universal service support mechanisms for

[58] *See Second Order on Reconsideration*, 12 FCC Rcd at 18423-24 para. 41; *see also* 47 C.F.R. § 54.701.

[59] *Second Order on Reconsideration*, 12 FCC Rcd 18400, Appendix B; *see also* 47 C.F.R. 54.711(a). ("Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator [USAC] on a semi-annual basis. . . ."). *See Second Order on Reconsideration*, 12 FCC Rcd at 18424 para. 43, 18442 para. 80, 18501-02, Appendix C. The Commission adopted the Worksheet and attached it as Appendix C to the *Second Reconsideration Order*. Subsequent to its issuance of the *Second Order on Reconsideration*, in an effort to reduce administrative burdens on contributors, the Commission consolidated carrier reporting requirements. *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*); *see also Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S) for Contributions to the Universal Service Support Mechanisms*, CC Docket No. 98-171, Public Notice, DA 99-1520 (rel. July 30, 1999); *Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by All Telecommunications Carriers*, CC Docket No. 98-171, Public Notice, 15 FCC Rcd 16434 (Com. Car. Bur. 2000).

[60] For example, contributions based on carriers' revenues accrued in January through June of one year were assessed on carriers in January through June of the next year.

[61] *TIB Order and FNPRM*, 14 FCC Rcd at 7522-33 paras. 49-64. The Commission excluded CMRS providers from these labeling requirements. *Id.* at 7501-03 paras. 13-19. *See infra* para. 103.

[62] *See TIB Order and FNPRM*, 14 FCC Rcd at 7523-25 paras. 51-52.

[63] *Id.* at 7537 para. 71.

[64] *See Federal-State Joint Board on Universal Service, Access Charge Reform*, Sixteenth Order on Reconsideration and Eighth Report and Order in CC Docket No. 96-45 and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1685 para. 15 (1999) (*Eighth Report and Order*).

schools and libraries and rural health care providers to make it consistent for all federal support mechanisms.[65] The Court of Appeals found that the Commission had exceeded its jurisdiction by assessing contributions for those programs based, in part, on the intrastate revenues of universal service contributors.[66] Accordingly, the Commission established a single contribution base for all federal universal service support mechanisms based on interstate and international end-user telecommunications revenues.

27. In order to ensure that universal service contributions are assessed on revenue data that is more reflective of current market conditions, the Commission recently reduced the interval between the accrual of revenues by contributors and assessment of universal service contributions based on those revenues from 12 months to an average interval of six months.[67] The Commission concluded that the shortened interval allows contributions to better reflect market trends influencing carrier revenues, such as the entry of new providers into the interstate marketplace.[68]

28. The Commission also has implemented rules and guidelines meant to reduce administrative burdens for certain categories of contributors. For example, the Commission established an interim safe harbor for calculating the percentage of interstate revenues of mobile wireless telecommunications service providers for universal service contribution purposes. Instead of reporting their actual interstate and international end-user telecommunications revenues, CMRS providers may simply report a fixed percentage of revenues, which ranges from one to 15 percent.[69] In addition, our rules provide that contributors whose annual universal service contribution is expected to be less than $10,000 are not required to contribute to the universal service mechanisms, the *de minimis* exemption.[70] Our rules also provide a limited exception to universal service contribution requirements for entities with interstate end-user telecommunications revenues that constitute less than eight percent of their combined interstate and international end-user telecommunications revenues.[71] The Commission also recently developed a safe harbor for the reporting of telecommunications revenues when bundling telecommunications services with customer premises equipment or information services.[72]

[65] *Universal Service Order*, 12 FCC Rcd at 9203-05 paras. 837-841.

[66] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 448 (section 254 does not unambiguously grant the FCC jurisdiction to assess intrastate revenues).

[67] *See Quarterly Reporting Order*, 16 FCC Rcd at 5748 para. 2.

[68] *See id.* at 5751 para. 9.

[69] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-59 paras. 13-15 (1998) (*Interim CMRS Safe Harbor Order*).

[70] *See* 47 C.F.R. § 54.708. Section 254(d) of the Act states that the Commission may exempt a carrier or class of carriers from contributing to the universal service mechanisms "if the carrier's contribution to the preservation and advancement of universal service would be *de minimis*."

[71] *See* 47 C.F.R. § 54.706(c).

[72] *See, e.g., Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48 paras. 47-54 (2001) (*Bundling Order*).

29. In the *2001 Notice*, the Commission sought comment generally on whether and how to streamline and reform both the contribution assessment methodology and the manner in which contributors may elect to recover the costs of contributions from their customers.[73] Among other things, the Commission sought comment on whether to modify the existing system, as well as whether to replace the current system with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge. Additionally, the Commission sought comment on whether to reform the manner in which carriers may recover their contribution costs from their customers. If carriers choose to recover universal service contributions from their customers through line items, the Commission sought comment on whether to require carriers to do so through a uniform universal service line item that corresponds to the contribution assessment.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

30. In this Further Notice, we seek further comment on whether to reform the assessment and recovery of universal service contributions. We welcome input on these proposals from all segments of the industry, consumer groups, state regulatory bodies, and state members of the Federal-State Joint Board on Universal Service (Joint Board). Based on the record in this proceeding, if a significant change in the contribution methodology seems warranted, we would refer one or more issues and the record developed in this proceeding -- through a traditional referral or some alternative means -- to the Joint Board for its input on an expedited basis. We recognize the importance of acting promptly and would take that into account in determining the appropriate role for the Joint Board.

31. First, we seek comment on a proposal to fundamentally reform the contribution assessment system by assessing contributions based on the number and capacity of connections provided to a public network. This proposal incorporates major features of a proposal submitted by commenters during the course of this proceeding, with modifications based on our examination of the record.[74] Under this proposal, residential, single-line business, and mobile wireless connections (excluding pagers) would be assessed a flat amount of $1.00 per connection, paging connections would be assessed $0.25 per connection, and the remaining universal service funding needs would be recovered through capacity-based assessments on multi-line business connections. We also seek comment on alternatives to mitigate the potential impact of transitioning to a connection-based assessment system on different industry segments, either by maintaining the current system's burden allocation, or by requiring multiple providers to contribute based on the connection provided to a particular consumer.

32. Second, we invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing system. Commenters are invited to address the relative costs and burdens on different industry segments of retaining or modifying the current system. We also invite comment on whether proposals to retain or modify the current system would serve our goals of ensuring the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications market.[75]

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[73] *See 2001 Notice*, 16 FCC Rcd at 9892.

[74] *See USF Coalition Ex Parte.*

[75] *See supra* paras. 7-13.

33. Finally, we address the contribution recovery process. We seek comment on modifying the current system by adopting certain, narrowly tailored restrictions on the manner in which contributors recover their contributions, as well as on a proposal to change to a "collect and remit" system.

A. Contribution Assessment

1. Connection-Based Assessment

34. We seek comment on replacing the existing system with a connection-based assessment. Specifically, we seek comment on whether to assess universal service contributions based on the number and capacity of connections a contributor provides to a public network. This connection-based assessment proposal incorporates major features of a proposal submitted on the record during the course of this proceeding.[76] Below, we first address the operation of the proposed connection-based assessment methodology, including its potential impact on consumers and contributors. In this regard, we also ask for comment on alternatives to mitigate the potential impact on certain contributors of transition to a new, connection-based system by maintaining the contribution obligations of different industry segments under the current system. We then address legal issues raised by a connection-based assessment, in particular its consistency with the statutory requirement that "[e]very telecommunications carrier that provides interstate telecommunications service" contribute to universal service "on an equitable and nondiscriminatory basis."[77] We then seek comment on the potential costs and benefits of a connection-based assessment system. Finally, we address implementation issues associated with a transition to a connection-based assessment.

a. Operation of Proposed Connection-Based Assessment

35. We seek comment on the operation of a connection-based assessment methodology, which incorporates major features of certain commenters' proposals with modifications based on our examination of the record.[78] This methodology would assess universal service contributions on providers of interstate telecommunications that provide end users with a connection to a public network. Under this proposal, interstate telecommunications providers would contribute $1 per month for each residential, single-line business, and mobile wireless connection to a public network, except for pagers, which are discussed below.[79] Multi-line business connection assessments would be based on the maximum available capacity, or bandwidth, of a connection.[80] Contributions for multi-line business connections would be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for

[76] *See USF Coalition Ex Parte.*

[77] *See* 47 U.S.C. § 254(d).

[78] *See supra* n. 3.

[79] *See supra* para. 17. For purposes of this discussion, fixed wireless connections are classified as either residential, single-line business, or multi-line business, as appropriate.

[80] "Maximum capacity" is used to clarify that contributors would be assessed based on the maximum amount of bandwidth they allocate to a multi-line business connection, not the actual amount of capacity used. For example, if a provider leases a facility to an end user that is capable of providing 1.544 Mbps of capacity, but the end user only used a fraction of that amount, the provider would be assessed based on the 1.544 Mbps, not the capacity actually used.

residential, single-line business, and mobile connections. A wireline and fixed wireless connection would be categorized as either residential/single-line business or multi-line business depending on whether a residential/single-business subscriber line charge (SLC) has been assigned to the connection.[81] Mobile wireless providers would contribute $1 per month for each activated handset.[82]

36. Under a connection-based assessment, local exchange carriers, interexchange carriers, and CMRS providers would contribute to universal service based on the number and capacity of end-user connections they provide to a public network. Incumbent and competitive local exchange carriers (including both wireline and fixed wireless) would contribute for the residential, single-line business, and multi-line business connections they provide to end users. Likewise, interexchange carriers would contribute for multi-line business connections, such as special access, they provide to end users. Interexchange carriers also would contribute to the extent that they operate as competitive local exchange carriers. Mobile providers would contribute for each activated handset. We note, however, the proposed connection-based assessment would have the effect of making local exchange carriers and mobile service providers responsible for a larger portion of the universal service funding, the majority of which is currently paid by interexchange carriers.[83] Below, we seek comment on the impact of a connection-based assessment on different industry sectors and on whether a connection-based assessment would be consistent with the Act.[84]

37. Residential, Single-Line Business, and Mobile Connections. We seek comment on whether to set a standard assessment amount for each residential, single-line business, and mobile connection to a public network and then assess the remaining universal service funding requirements on providers of multi-line business connections. Under this proposal, if a residential, single-line business, or mobile wireless customer maintains one voice line, the connecting provider would be assessed for one connection. If that customer has two voice lines from its residence, the contributor would be assessed for two connections. If a customer obtains access to a public network via two connections, one fixed connection and one activated mobile handset, two assessments would apply (the fixed service provider would contribute for its connection and the mobile service provider would contribute for its connection).

38. In particular, we seek comment on whether initially to set the standard assessment amount for providers of residential, single-line business, and mobile wireless connections (excluding pagers) at $1 per month for each connection.[85] A $1 per month assessment for each residential, single-line business, and mobile wireless connection to a public network is supported

[81] 47 C.F.R. §§ 69.104(g), 69.152 (g). The subscriber line charge is a flat, monthly charge that incumbent local exchange carriers assess directly on end users of telecommunications service to recover a portion of their revenue assigned to the interstate jurisdiction. *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982, 16007 para. 68 (1997) (*Access Charge Reform Order*). Below, we seek comment on how carriers that do not charge a SLC would determine whether the connection is provided to a residential/single-line business customer. *See infra* para. 58.

[82] Paging providers would contribute $0.25 for each pager. *See infra* para. 39.

[83] *See infra* paras. 59-63.

[84] *See infra* paras. 59-63, 65-69.

[85] *See USF Coalition Ex Parte.*

by staff analysis showing that if providers pass through the assessment with no mark up, residential customers would pay roughly the same overall recovery fees under a per-connection assessment system as they do under the existing methodology.[86] A standard $1 per month assessment amount for residential, single-line business, and mobile wireless connections also may make a carrier's contribution obligation more predictable and understandable for consumers. In addition, by freezing at $1 per month the assessment for residential, single-line business, and mobile wireless connections for a specified period of time, we would provide contributors with greater certainty regarding their future contribution obligations.[87]

39. Under a connection-based assessment, providers of interstate paging services would also generally be subject to a flat per-connection assessment amount because paging services provide access to a public network. Recognizing the unique characteristics of paging services, we seek comment on how to assess pager connections under a connection-based assessment. In contrast to other telecommunications services, most pagers provide limited functionality, only providing customers with access to one-way communications. Pager providers currently contribute to universal service under an interim safe harbor provision that allows them to assume that interstate end-user telecommunications revenues comprise 12 percent of their total revenues.[88] Based on this safe harbor, a significant number of pager providers are not required to contribute based on the *de minimis* exception, and many have urged the Commission to be mindful of this in considering possible reforms to the current assessment methodology.[89] We seek comment on whether a $0.25 per-connection assessment on pagers would be an appropriate amount and what impact this change would have on the marketplace generally and the paging industry in particular.[90] In addition, we seek comment on the appropriate assessment amount for certain Specialized Mobile Radio providers that currently contribute based on a safe harbor of one percent of their total revenues.[91]

40. We also seek comment on whether to exempt Lifeline connections from the contribution base. The Commission's Lifeline support program is designed to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges.[92] Under the existing system, incumbent local exchange carriers may not recover universal service contributions from their Lifeline subscribers, although other carriers may do so.[93] The current methodology does not, however, exclude interstate revenues from Lifeline

[86] *See infra* paras. 46-49.

[87] Below, we seek comment on how frequently to adjust the $1 per month assessment to reflect increases or decreases to universal service fund requirements and the number and capacity of connections. *See infra* paras. 74-75.

[88] *See Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259-60 para. 14. As discussed below, the average pager provider currently contributes approximately $0.07 per pager. *See infra* para. 58.

[89] Small Paging Alliance Comments at 5; Letter from L. Charles Keller, Wilkinson Barker Knauer LLP, on behalf of Arch Wireless, Inc. and PCIA, to Magalie Roman Salas, Federal Communications Commission, filed Nov. 16, 2001.

[90] *See USF Coalition Ex Parte* (This amount was proposed by the USF coalition).

[91] *See Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21260 para. 15.

[92] *See Universal Service Order*, 12 FCC Rcd at 8952-53 para. 329. Lifeline customer eligibility criteria are outlined in section 54.409 of our rules. *See* 47 C.F.R. § 54.409.

[93] *See* 47 C.F.R. § 69.158, 69.131; *see also Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15

(continued....)

customers from the contribution base. Therefore, under the current system contributors are assessed based on interstate revenues derived from Lifeline customers. Because Lifeline customers represent only a small portion of the contribution base, approximately 5.9 million[94] of 235 million residential connections and mobile wireless connections,[95] we do not believe that exempting Lifeline connections would have a significant impact on universal service funding. We seek comment on this analysis.

41. We seek comment on how to define "connection" for purposes of a connection-based assessment. The same definition of connection would apply to residential, single-line business, mobile wireless, and multi-line business connections.[96] Specifically, we seek comment on defining a "connection" as a facility that provides an end user with independent access to a public network, regardless of whether that connection is circuit-switched, packet-switched, or a leased line (*e.g.*, special access). Under this definition, each connection would be a separate assessable unit. We seek comment on this definition. We invite commenters to address whether to apply the same definition of "end user" that is applied under the existing methodology, and, if not, what definition to use.[97] Under the existing system, "end-users" include purchasers of retail interstate telecommunications or telecommunications services.[98] End users do not include entities that purchase and resell telecommunications or telecommunications services to other customers.[99] Consistent with this definition, under a per-connection assessment, telecommunications resellers could be considered providers of connections to a public network to the extent that they provide independent access to a public network. Resellers provide services to end users over infrastructure they obtain from facilities-based providers. We seek comment on this analysis.

42. We also invite commenters to address how to define "independent access." Should a connection be considered "independent" if it does not require the presence of any other activated end-user connection to provide access to a public network? Under such a definition,

(...continued from previous page)
FCC Rcd 12962, 13057-58 paras. 218-220 (2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, Second Report and Order, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers,* CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19688-89 para. 177 (2001) (*Multi-Association Group Order*).

[94] FCC, Common Carrier Bureau, Industry Analysis Division, *Universal Service Monitoring Report,* CC Docket No. 98-202, Table 2.5 (Oct. 2001) (*Monitoring Report*).

[95] *Trends in Telephone Service,* Common Carrier Bureau, Industry Analysis Division, Table 8.4 (showing approximately 125 million residential lines) (Aug. 2001) (*Trends Report*); *Sixth CMRS Competition Report,* 16 FCC Rcd at 13354 (showing 109.5 million mobile wireless subscribers).

[96] *See infra* para. 56.

[97] *See Universal Service Order,* 12 FCC Rcd at 9206-09 paras. 843-850; *see also* Instructions to FCC Form 499-Q, at 10; Instructions to FCC Form 499-A, at 15. Under the existing methodology, "end-users" include purchasers of retail interstate telecommunications or telecommunications services. *See Universal Service Order,* 12 FCC Rcd at 9207 para. 844.

[98] *See id.* at 9207 para. 844.

[99] *See id.*

for example, two activated voice-grade connections via a single loop might be deemed "independent" because each allows stand-alone access to a public network. Likewise, line-shared or line-split voice-band service and digital subscriber line (DSL) service provided over the same loop might both be deemed "independent," and therefore separately assessed, because each allows stand-alone access to a public network. On the other hand, certain information services, such as voice mail or dial-up Internet access, may not be deemed "independent" because they would not allow access to a public network without an activated voice-grade connection.[100] We seek comment on this analysis. Finally, we seek comment on how to define "public network" for the purpose of connection-based assessment.

43. We seek comment on whether and how interstate telecommunications connections to private networks should be assessed under the connection-based assessment methodology discussed above. Under the existing system, private service providers, which provide access to private networks on a private contractual basis, are subject to contribution obligations.[101] In this regard, the Commission stated that these entities could not provide their services to others for a fee without the benefit of access to the public switched telephone network (PSTN), which is supported by universal service mechanisms.[102] Even if private service providers are not connected to the PSTN, the Commission reasoned, these entities compete with common carriers to the extent that they provide telecommunications, and therefore should contribute based on the principle of competitive neutrality.[103] We invite commenters to address whether this reasoning would be applicable under a connection-based assessment system and, if so, how to structure a definition of connection to encompass connections to private networks.

44. In addition, we seek comment on whether a connection-based assessment system would raise any of the issues that caused the Commission previously to reject a per-line assessment system. When the Commission originally adopted a revenue-based assessment system, it rejected a per-line approach, concluding that the need to establish line-equivalency ratios would make such an approach difficult to administer and could possibly result in a system that is not competitively neutral.[104] Assessment on a per-line basis would require the Commission to establish equivalency ratios for calculating assessments on contributors that do not provide service on a per-line basis.[105] For example, the Commission would have to determine how many voice-grade equivalent lines are provided over facilities such as T-1s.[106] By contrast, a connection-based approach may not require the use of equivalency ratios,[107] because the determinative factor would be whether a customer has access to a public network. Once that determination is made, an assessment amount would be assigned to the connection

[100] *See infra* para. 66.

[101] *Universal Service Order*, 12 FCC Rcd at 9184 para. 796.

[102] *Id.*

[103] *Id.*

[104] *See id.* at 9210 para. 852.

[105] Bell South Comments at 2; SBC Comments at 15-16; *see also Universal Service Order*, 12 FCC Rcd at 9210 para. 852.

[106] *See* Dodd, Annabel Z., *The Essential Guide to Telecommunications* (2d. ed. 1999) (discussing these types of facilities).

[107] *See supra* para. 35.

based simply on whether it is a residential, single-line business, mobile wireless, or multi-line business connection. Each connection would have a separate assessment assigned to it. A residential, single-line business, or mobile wireless connection, other than pagers, would be assessed $1.00. As described more fully below, the assessment amount for multi-line business connections would be based on the maximum capacity of the connection, so it would be unnecessary to establish voice-grade equivalency ratios for such connections.[108] We seek comment on this analysis.

45. For purposes of identifying the facility that provides access to a public network in the mobile context, we also seek comment on whether to assess mobile wireless contributors based on the number of activated handsets they provide to customers.[109] Mobile service providers typically provide one independent connection to a public network over each activated handset. By focusing on activated handsets, contributions would be assessed only on those handsets that are capable of being used to make or receive interstate calls. We also note that mobile wireless carriers currently submit data to the Commission on an activated handset basis.[110] While this assessment basis may be the most equitable and administratively convenient, we encourage commenters to suggest other possible measures for mobile wireless contributors. Commenters also should address how offerings by mobile wireless providers, such as emergency-only phones, prepaid wireless services, and convention center and other temporary service arrangements, should be treated.

46. We ask commenters to provide data and analysis on the likely impact of a proposed connection-based assessment on residential customers. Preliminary staff analysis indicates that the total contribution recovery fees paid by the average household would be approximately the same under a connection-based assessment system as under the existing system. Based on publicly-available data from the year 2000, and taking into account the elimination of "circularity" from the contribution base and anticipated fund growth, staff estimates that the average household pays approximately $1.93 per month in total contribution recovery fees under the current system.[111] Based on the same data and assumptions, staff estimates that the average household likewise would pay approximately $1.93 in total contribution recovery fees under the proposed connection-based assessment system. These estimates include both mobile and fixed residential assessments for the average household, and primarily are based on publicly available data taken from Commission reports and TNS Telecommunications Bill Harvesting Data (Bill

[108] *See infra* para. 56.

[109] *See USF Coalition Ex Parte.*

[110] *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7756-57 para. 84 (2000).

[111] For purposes of this analysis, we conservatively use an 8% contribution factor, which is based on the elimination of circularity in our methodology, and anticipated fund growth due to the implementation of recent universal service high-cost support reforms for rural and rate-of-return carriers. *See infra* paras. 113-114; *see also Multi-Association Group Order*, 16 FCC Rcd at 19688-89 para. 177 (new support mechanism to be implemented July 1, 2002); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (released May 23, 2001) (*Rural Task Force Order*). The contribution factor is likely to increase further over time as these reforms are fully implemented. The contribution factor for the first quarter of 2001 is 6.808%. *See First Quarter 2002 Contribution Public Notice* at 3.

Harvesting Data).[112] These estimates also assume that contribution costs are flowed through to all end users equally and without markup.[113] In order to determine the total contribution recovery fees paid by the average household, staff assumed that 66.7 percent of mobile wireless devices currently are subscribed to by residential customers. The staff's analysis also assumes that, under a connection-based assessment system, both residential connections and mobile wireless connections (excluding pagers) would be assessed $1.00, and pager providers would be assessed $.25 per pager. We invite comment on this analysis, and encourage commenters to provide their own analyses and supporting data.

47. We seek comment on whether this analysis reasonably approximates average household contribution obligations under the existing assessment and the potential impact on the average household of adopting a connection-based assessment. For example, because staff uses publicly available data from 2000, the analysis does not reflect any increases or decreases in revenues or the number of connections for certain types of services. We intend to incorporate more recent public data in the analysis of consumer impact as it becomes available. We seek comment on how to refine this analysis. We also seek comment on other ways to measure consumer impact.

48. We note that Verizon also submitted summary findings from a study estimating the impact of a connection-based assessment system on different percentiles of residential customers, based on usage.[114] Some of the data submitted by Verizon is subject to a Protective Order,[115] and it is unclear from the publicly-available data what assumptions Verizon has made about how a connection-based assessment system would operate. We note, however, that Verizon's study appears to support generally the conclusion that a connection-based assessment system would not significantly shift the burden of supporting universal service to or from contributors serving residential customers, although certain percentiles of residential customers would have increased contribution obligations.[116] We invite comment on Verizon's data and analysis.

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[112] Staff have relied on the following data from June 2000: *Monitoring Report* (households with phone service); *Trends Report* (residential lines, residential lines charged at non-primary subscriber line rate, residential lines charged at primary subscriber line charge); *Statistics of Communications Common Carriers 2000/2001 Edition*, Federal Communications Commission (total analog and digital residential lines); *Sixth CMRS Competition Report*, 16 FCC Rcd at 13462 (average mobile telephony bill, mobile telephony units); *Telecommunications Industry Revenues 2000*, Industry Analysis Division, Common Carrier Bureau (percent contribution base from CMRS revenues, total paging contribution base per month, percentage of end-user revenues reported as interstate and international); *ReQuest Market Monitor* (Bill Harvesting Data), TNS Telecoms (rel. Feb. 2001) (average pre-tax long-distance bill).

[113] As we note above, some carriers have line items in excess of our contribution factor. *See supra* paras. 18-19. If these mark ups were taken into account, the benefits of moving to a connection-based assessment system would be greater.

[114] *See* Letter from W. Scott Randolph, Verizon Communications, to Magalie R. Salas, Federal Communications Commission, filed Oct. 17, 2001 (*Verizon Ex Parte*). The Cambridge Strategic Management Group (CSMG) conducted the study.

[115] *See* 47 C.F.R. § 0.459. The data have been made available for public inspection subject to a Protective Order. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Protective Order, DA 01-2842 (Acc. Pol. Div. rel. Dec. 12, 2001).

[116] *See Verizon Ex Parte* at 11-12.

49. We also seek comment on the impact of this proposal on low-volume and low-income consumers. We seek comment on arguments from some parties that assessing an amount of $1 per month for each residential, single-line business, and mobile wireless connection (excluding pagers) would be overly regressive and discriminatory to low-volume users,[117] and would increase the contribution burden on low-income customers. Regarding low-income consumers, staff analysis of Bill Harvesting Data indicates that low-volume usage does not necessarily indicate a low-income customer. We also note that, because the proposal would prohibit connecting carriers from recovering universal service contributions from Lifeline customers, many low-income consumers would bear no burden for universal service contributions.[118] Lifeline customers may also benefit significantly from a connection-based assessment because they would not be assessed contribution recovery fees by long distance providers. We seek comment on this analysis.

50. *Multi-Line Business Connections*. We also seek comment on how to calculate assessments for multi-line business connections based on the capacity of those connections. Specifically, we seek comment on whether to assess multi-line business connections on a capacity basis. Commenters propose assessing multi-line business connections on a capacity basis because these connections typically provide significantly higher bandwidths than connections provided to residential, single-line business, and mobile wireless customers.[119] If multi-line business connections were not assessed on a capacity basis, a per-connection assessment would result in low-volume residential connections being assessed at the same rate as higher-volume multi-line business connections.[120] Alternatively, we seek comment on whether to assess all residential, single-line business, mobile, and multi-line business connections the same amount, regardless of the capacity of the connection.

51. We seek comment on whether contributions from providers of multi-line business connections should be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for residential, single-line business, and mobile connections. This proposal would make a contributor's contribution obligation more predictable and understandable for residential, single-line business, and mobile customers, while ensuring that the residual universal service funding requirement is assessed on multi-line business connections.[121] Although specific assessment amounts for multi-line business connections may vary more than assessment amounts for residential, single-line business, and mobile connections, multi-line business assessment amounts would be reduced more frequently to account for increases in the number and capacity of connections.[122] Multi-line business customers also may be better equipped to gather necessary information to understand the basis for recovery amounts that fluctuate from quarter to quarter. We seek comment on this analysis.

[117] Excel Comments at 4-5; NECA Comments at 6; OPASTCO Comments at 6; SBC Comments at 14; Texas OPC and CFA Comments at 6.

[118] *See supra* para. 40.

[119] *See USF Coalition Ex Parte*; WorldCom Comments at 2; Level 3 Reply Comments at 10.

[120] *See* WorldCom Comments at 18.

[121] *See supra* para. 37.

[122] *See infra* paras. 74-76 (seeking comment on whether to adjust multi-line business assessments on a quarterly basis and residential, single-line business, and mobile wireless assessments on a less frequent basis).

52. In order to determine the assessment for an individual multi-line business connection, commenters have proposed calculating the assessment based on three tiers of capacity.[123] Tier 1 would include connections provided to end users at speeds of less than 1.544 MegaBits Per Second (Mbps). In this tier, contributors would be assessed an amount equal to the base factor for each connection.[124] The "base factor" would be calculated by dividing the residual funding requirement by the total number of multi-line business capacity units reported by all contributors.[125] Tier 2 would include connections with speeds of equal to or greater than 1.544 Mbps but less than 45 Mbps. Contributors would be assessed an amount equal to five times the base factor for each connection in this tier.[126] Tier 3 would include connections with speeds of 45 Mbps and higher. In this tier, contributors would be assessed an amount equal to 40 times the base factor for each connection.[127] Under a tiered approach, contributors would simply need to know the number and maximum capacity of a connection to determine the extent of their contribution obligations. For example, assume the residual funding requirement is $4 billion, and that contributors reported 1 billion units of multi-line business capacity.[128] Dividing the total residual fund requirement by the total number of reported units of multi-line business capacity would yield a base factor of $4.00. Therefore, a Tier 1 connection would be assessed $4.00, a Tier 2 connection would be assessed $20.00, and a Tier 3 connection would be assessed $160.00. Building on this example, further assume that a contributor has a customer who purchased three T-1s, each with the maximum capacity of 1.544 Mbps, to provide service to a customer service call center. Under the tiered approach, the contributor would then be assessed a total charge of $60.00 for the connections to that customer.[129] In subsequent quarters, the base factor would be adjusted to reflect changes in the number of connections in each tier of capacity reported by contributors and changes in residual funding requirements. We seek comment generally on this proposal.

53. In particular, we seek comment on whether the proposed tiers are set at the appropriate levels and whether establishing additional tiers of capacity would be appropriate. WorldCom states that the proposed tiers are based on current market practices with regard to assessing multi-line business presubscribed interexchange carrier charges (PICCs) and SLCs.[130] The tiers also track the wireline facilities most often purchased by multi-line business customers, namely DS1, which has a capacity of 1.544 Mbps, and DS3, which has a capacity of 45 Mbps. In addition, the tiers reflect the potential efficiencies of scale gained by using higher-speed

[123] *USF Coalition Ex Parte*. *See generally* WorldCom Comments.

[124] *Id.*

[125] *USF Coalition Ex Parte*. Total Multi-Line Business Universal Service Obligation = (X*connections in level 1)+(5X*connections in level 2)+(40X*connections in level 3), where X = the multi-line business assessment for level 1.

[126] *Id.*

[127] *Id.*

[128] To arrive at 1 billion units of capacity, we use 200 million Tier 1 connections, 80 million Tier 2 connections, and 10 million Tier 3 connections to the formula described in note 125.

[129] $60 (Fee) = $20 (5 x base factor) x 3 (number of connections in Tier 2).

[130] *See supra* para. 52.

facilities, in that they provide a discount in assessments as capacity increases.[131] We note, however, that certain facilities are designed with capacities slightly below and above these thresholds. For example, there are DS3 facilities with a capacity of 44.7 Mbps. We therefore seek comment on whether we should adopt different or additional tiers to account for alternative infrastructure. We also seek comment on whether the proposed third tier would inappropriately favor certain high-volume business customers. Because a multi-line business connection would have the same assessment regardless of how far it is above 45 Mbps, we seek comment on whether this tiered approach to multi-line business assessment may have the effect of favoring providers serving certain high-volume business customers. We also seek comment on whether three tiers would provide incentives for customers to purchase high-capacity connections, and whether this would have the effect of reducing the number of multi-line business connections and shifting contribution burdens to subscribers with lower-capacity multi-line business connections. We also seek comment on whether the multipliers assigned to the different tiers are appropriate.

54. We seek comment on whether the potential administrative benefits of a tiered approach outweigh the potential impact of such an approach on decisions to purchase additional capacity. A tiered approach would only require contributors to assign connections into three categories, as opposed to having to provide detailed information regarding each level of capacity purchased by its customers.[132] At the same time, a tiered approach for multi-line business assessment may skew marketplace behavior. Because movement to the next tier would result in a significant increase in contribution obligations, a tiered approach may deter multi-line business customers from purchasing certain thresholds of additional capacity.

55. In order to provide contributors with guidance in determining which tier of capacity to assign a multi-line business connection, we also seek comment on whether the capacity of a multi-line business connection should be measured as the maximum amount the contributor allocates to the customer or on the maximum amount the contributor could potentially provide to the customer. Under the connection-based proposal discussed above, contributors would be assessed for multi-line business connections based on the maximum amount of bandwidth they allocate to the connection, not the actual amount of capacity used.[133] While most multi-line business connections provide a specific maximum level of capacity, other connections provide customers, through contractual agreements, with the option of utilizing additional capacity on a short-term basis. For example, Centrex services offer the potential to utilize additional capacity in those instances where the demand for capacity exceeds the amount of capacity that the carrier has allocated for the customer.[134] We seek comment on how to measure capacity under these circumstances.

[131] In its comments, WorldCom states that, if a discount were not provided to higher capacity facilities, the universal service contribution obligations associated with those facilities may exceed the cost of service. WorldCom Comments at 23.

[132] *Id.*

[133] *See supra* n. 80.

[134] For example, if a PBX switch has a 1.544 Mbps trunk, and all of that capacity is being used, the customer would be unable to make or receive phone calls. A customer that uses a Centrex switch, however, that has a 1.544 Mbps trunk in which all of the capacity is being used would be able to continue to make or receive phone calls because the carrier establishes the service with reserve capacity.

56. We seek comment on how to apply the definition of "connection" proposed above for purposes of determining assessments on multi-line business connections.[135] Under the proposed definition, the assessable unit would be defined as a facility that provides an end user with independent access to a public network, regardless of whether that connection is circuit-switched, packet-switched, or a leased line. We anticipate that the same definition would be applicable in the multi-line business context. We seek comment, however, on the need to establish a method of identifying a specific location or point at which a given multi-line business facility provides access to a public network, in order to ensure that the capacity of a multi-line business connection is measured in a competitively neutral manner. Identifying the point of access may impact the number of connections and the amount of capacity of a connection in certain multi-line business contexts. For example, Centrex and Private Branch Exchange (PBX) systems are purchased by multi-line business customers based on their projected capacity needs, and service providers aggregate capacity for both types of systems on the trunk-side of the switch.[136] The two systems are configured differently, however. Customers with Centrex systems have, for each telephone on their premises, a separate loop to the Centrex switch, which is maintained by the service provider and may be located either at the customer's premises or at the service provider's central office.[137] Customers with PBX systems, on the other hand, maintain their own facilities for internal communications and may have only a single facility maintained by the service provider that provides access to a public network. If the point of access for Centrex and PBX systems were deemed to be the trunk side of the switch, the two types of systems would be treated equally for assessment purposes. We therefore seek comment on whether we should adopt, for multi-line business connections, a method of identifying a specific location or point of access to a public network, and what that methodology should be.

57. At this time, we do not have sufficient data on universal service fees paid by the average multi-line business customer to determine the impact that a connection-based assessment approach would have on such customers. It may be, however, that a connection-based assessment initially would result in modest increases to fees paid by certain business customers and a decrease in fees paid by other customers. We ask commenters to address the likely impact of a connection-based assessment on multi-line business customers, and any costs and benefits of such impacts. We encourage commenters to submit data in support of their positions.

58. *Distinguishing Between Residential/Single-Line Business and Multi-Line Business Connections*. We also seek comment on whether to use a local exchange carrier's subscriber line charge (SLC) designation on a customer's bill as a proxy for determining whether a fixed connection is a residential/single-line business or multi-line business connection for assessment purposes.[138] The SLC designation is an existing one that incumbent local exchange carriers are

[135] *See supra* para. 41.

[136] *See generally*, Dodd, Annabel Z., *The Essential Guide to Telecommunications* (2d. ed. 1999) (*discussing* PBX and Centrex technology).

[137] *Id.*

[138] Subscriber line charges are charges that are assessed by local phone companies to recover some of the costs associated with providing interstate access through the local phone network. *See Access Charge Reform Order*, 12 FCC Rcd at 16007 para. 68. A residential subscriber line charge is assessed on those lines where the subscriber pays a rate that is "described as a residential rate in the local exchange service tariff," whereas a single line business subscriber line charge is assessed where the subscriber pays a rate that is "not described as a residential rate in the

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required to make based on the rate the subscriber pays for the connection. In the context of fixed connections, the local exchange carrier would most often be the connecting provider, because its infrastructure is used to obtain a connection to a public network. Therefore, local exchange carriers may be best able to determine which connections to treat as residential/single-line business connections and which to treat as multi-line business connections.[139] Additionally, local exchange carriers may be in a better position than other contributors, such as interexchange carriers, to determine which connections are provided to Lifeline customers, and thus should be exempt from assessment.[140] We note, however, that competitive local exchange carriers are not required to assess SLCs, and often have different tariff obligations than incumbent local exchange carriers. We seek comment on whether competitive local exchange carriers have sufficient information to determine which of their customers are residential or single-line businesses for purposes of determining their assessment obligation and, if not, possible alternative methods for making that determination.

59. *Contributor Impact*. We recognize that a connection-based assessment approach may affect different industry segments in different ways. Under the connection-based assessment methodology discussed above, local exchange carriers, interexchange carriers, and mobile wireless providers would contribute to universal service based on the number and capacity of end-user connections they provide to a public network.[141] This would represent a significant shifting of contribution obligations away from interexchange carriers to local exchange carriers and mobile service providers. In the third quarter of 2001, interexchange carriers were responsible for approximately 63 percent of contributions, while local exchange carriers were responsible for approximately 23 percent, and mobile wireless providers were responsible for approximately 14 percent.[142] Under the connection-based assessment proposal, staff estimates that mobile service providers initially would be responsible for approximately 24 percent of contributions,[143] so that fixed service providers, including both local exchange carriers and interexchange carriers, to the extent that they provide end-user connections, initially would be responsible for approximately 76 percent of contributions. On average, staff estimates that mobile wireless providers (excluding paging providers) currently contribute approximately $0.46 per connection,[144] pager providers currently contribute approximately $0.07 per pager,[145] and

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local exchange service tariff and does not obtain more than one such line from a particular telephone company." 47 C.F.R. §§ 69.104, 69.152.

[139] Incumbent local exchange carriers also keep track of their lines for determining which interstate access costs to recover from other charges (for example, common carrier line charges for rate-of-return carriers).

[140] *See infra* para. 94 (discussing whether to exempt Lifeline customers).

[141] *See supra* para. 36. Mobile wireless providers would contribute for each activated handset and/or pager.

[142] *See* Telecommunications Industry Revenue Report: 2001, Industry Analysis Division, Table 14 (rel. Jan. 2002).

[143] [(109.5 million handsets x $1) x 3] ÷ $1.378456 billion = 23.8%. *See First Quarter 2002 Contribution Public Notice*, DA 01-2823 (first quarter 2002 fund requirement).

[144] This number is derived by taking the average mobile telephony bill of $45.27, which appears in the *Sixth CMRS Competition Report*, and dividing that number by the current interim safe harbor of 15% and then dividing that number by the current contribution factor of 6.808%. *See Sixth CMRS Competition Report* , 16 FCC Rcd at 13462; *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258 para. 13; *First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd at 21331.

fixed service providers (local exchange carriers and interexchange carriers) contribute approximately $1.29 per residential connection.[146] Under a connection-based assessment proposal, both fixed connections and mobile wireless connections (excluding pagers) would be assessed $1.00, and pager providers would be assessed $.25 per pager. We seek comment on what relevance, if any, these potential shifts should have for the analysis of whether to move to a connection-based assessment system. We specifically seek comment on whether minimizing the reallocation of contribution obligations among industry segments should be a goal in moving to a per-connection assessment system, and, if so, the extent to which such reallocation should be minimized. We also seek comment on whether, if we adopt a per-connection contribution approach, interim measures should be adopted to mitigate the immediate impact of a shift in contribution burdens.

60. Sprint supports adoption of a connection-based assessment methodology, but proposes to calculate different per-connection assessments for fixed and mobile subscribers.[147] The principal purpose of Sprint's proposal is to move to a connection-based assessment system but maintain the relative contribution burdens on different industry segments (mobile wireless, local exchange carrier, and interexchange carrier) under the existing, revenue-based assessment system. Sprint's proposal would operate as follows.[148] First, Sprint proposes that an "interstate allocator" be calculated for each industry segment (mobile wireless, local exchange carrier, and interexchange carrier) based on the proportion of each industry sector's interstate revenues to its total revenues.[149] Sprint proposes to base the "interstate allocators" on the interstate revenues currently reported by industry segments.[150] Second, the interstate allocator for each industry segment then would be multiplied by total revenues for that industry segment to determine the interstate revenues in that industry segment that will be considered in determining the universal service per-connection charge.[151] Third, the sum of interstate revenues for the fixed and mobile industry segments would be divided by the then-applicable universal service funding

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[145] This number is derived by taking the average paging bill of $8.00, which appears in comments filed by Arch Wireless, Inc., and dividing that number by the current paging service interim safe harbor of 12% and then dividing that number by the current contribution factor of 6.808%. *See* Arch Wireless Comments at 5; *see also Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259 para. 14; *First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd at 21331.

[146] Based on staff analysis of publicly-available data as of June 30, 2000. *See supra* n. 112.

[147] Sprint Comments at Attachment A.

[148] *See* Letter from Pete Sywenki, Sprint, to Magalie Roman Salas, Federal Communications Commission, filed Aug. 8, 2001 (*Sprint Ex Parte*).

[149] *See* Sprint Comments at 8-9; *Sprint Ex Parte* at 4. Sprint uses the term "wireless," which it defines to include CMRS. *See* Sprint Comments at 8, n. 14. Although Sprint does not address the treatment of fixed wireless connections under its proposal, we note that providers of fixed wireless local exchange service are classified as local exchange carriers under the Act and the Commission's rules.

[150] Sprint Comments at 8-12. Sprint proposes dividing carriers into distinct industry segments, such as wireless carriers, local exchange carriers, and interexchange carriers. A percentage of revenues that represent that segment's interstate revenues would then be determined based on Form 499 filings. Based on Sprint's estimates, the current percentage for each industry segment is: local exchange carriers – 15%; interexchange carriers – 74%; and wireless providers – 15%. Contributors would report interstate revenues based on those percentages. *Id.*

[151] *See id.* at 9; *Sprint Ex Parte* at 4.

requirement to arrive at a contribution factor.[152] The contribution factor would be multiplied by the total universal service funding requirement for each industry segment to determine the dollar amount due from fixed and mobile contributors. Finally, the contribution requirements for the fixed and mobile industry segments would be divided by total fixed and mobile subscriber lines, respectively, to obtain the per-connection contribution charges for fixed and mobile subscribers.[153] Using this approach, Sprint estimates that there would be an assessment of $2.01 per month for each fixed connection and $0.46 per month for each mobile connection.[154] We note that Sprint's $2.01 estimate assumes that all residential, single-line business, and multi-line business connections would be assessed the same amount per connection, although Sprint entertains the possibility of assessing high capacity multi-line business connections on some multiple of the assessment for residential and single-line business connections.[155]

61. We seek comment on the approach described by Sprint. In particular, we seek comment on whether basing per-connection contribution obligations on the proportion of industry interstate revenues currently reported by the different industry segments would be equitable, non-discriminatory, and competitively neutral. Would the preservation of existing proportions of interstate revenues in a connection-based assessment system import distortions currently present in the revenue-based system? The percentage of interstate revenues reported by the mobile wireless industry under the current system is largely a function of interim safe harbors adopted by the Commission.[156] Under Sprint's approach, this method of reporting would continue for some period of time, such as three to five years, regardless of increases and decreases in the proportion of revenues that are interstate for different segments of the industry.[157] In the event we determine that we should assess contributions based on connections rather than interstate telecommunications revenues, we seek comment on whether it is appropriate to freeze the interstate revenue percentages of different industry segments based on the previous revenue-based system as proposed by Sprint. We also seek comment on whether such disparate treatment could provide certain categories of contributors with a cost advantage over other categories of contributors, potentially creating uneconomic incentives for customers to migrate to certain types of services.[158] We seek comment on these issues.

62. Some commenters are concerned that a connection-based approach would shift from interexchange carriers to local exchange carriers some of the burden associated with contributing to the fund.[159] We seek comment below on the legal implications of this shift. Specifically, we seek comment on whether a connection-based assessment would be consistent

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[152] *See id.* at 4.

[153] *Id.* Sprint supports a "collect-and-remit" methodology for the assessment and recovery of universal service contributions under which the connecting carrier would collect the per-connection charge from subscribers and remit those amounts to the fund administrator. *See* Sprint Reply Comments at 4-6. Below, we discuss a collect-and-remit proposal in more detail. *See infra* paras. 101-102.

[154] *See Sprint Ex Parte* at 4.

[155] Sprint Reply Comments at 7.

[156] *Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21258-59 paras. 13-15.

[157] *See* Sprint Comments at 12.

[158] *See id.* at 11-12.

[159] Cingular Comments at 6; NECA Comments at 5; OPASTCO Comments at 6; Verizon Reply Comments at 2.

with the general requirement that "[e]very telecommunications carrier that provides interstate telecommunications service" contribute to universal service.[160] One way to address this concern would be to divide the proposed per-connection assessment among more than one wireline or fixed wireless entity, or to assess on an entity other than the connecting provider. For example, one option would be to require presubscribed interexchange carriers to contribute for their presubscribed residential and single-line business customers, and require local exchange carriers to contribute only for those customers that do not have a presubscribed interexchange carrier.[161] We seek comment on whether this approach addresses these legal concerns, and on other ways of addressing this issue.

63. Although such an approach may more closely maintain the relative contribution burdens of different segments of the telecommunications industry, it may reduce the potential administrative benefits of changing to a connection-based system. As discussed above, we believe that a connection-based assessment would potentially simplify the current assessment system and reduce overall administrative burdens, benefiting both contributors and customers.[162] This is because only one entity would contribute for a single connection under the connection-based assessment. In addition, interexchange carriers may not have the necessary information to determine whether a customer has a residential/single-line business connection. Some also argue that they lack the information necessary to exempt Lifeline customers.[163] In addition, it may be difficult to determine who should contribute when a customer selects multiple interexchange carriers.[164] We seek comment on these issues. Do the potential benefits of assessing more than one entity, or an entity other than the connecting provider, for a connection outweigh the increased administrative problems and burdens of such approaches?

b. Legal Authority

64. *Background*. Congress established a statutory framework in the Act governing the assessment of universal service contributions.[165] Section 254(d) of the Act mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[166] Section 3 of the Act defines a telecommunications carrier as "any provider of

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[160] *See infra* paras. 65-67.

[161] AT&T Reply Comments at 14. Commenters that favor a connection-based assessment generally prefer having the local exchange carrier be the contributor. Sprint Comments at 14; WorldCom Comments at 21; AT&T Reply Comments at 13-14.

[162] *See infra* para. 71.

[163] *See infra* at para. 94. We note, however, that AT&T recently reported that it does not recover universal service contributions from Lifeline customers. *See* Susan McGovern, *AT&T Boosts Subscriber Charges to Recoup USF Contributions*, TR DAILY, at 3 (Jan. 3, 2002).

[164] A customer could have more than one interexchange carrier if, for example, it selected one for interLATA services and another for intraLATA services.

[165] *See* 47 U.S.C. § 254.

[166] 47 U.S.C. § 254(d); *see also* 47 U.S.C.§ 254(b)(4), (5) (Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient). The Commission adopted the additional principle that federal support

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telecommunications services...," and "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[167] Section 3 of the Act defines "telecommunications" as "transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received."[168] In the *Universal Service Order*, the Commission interpreted this statutory language as imposing a mandatory contribution requirement on all telecommunications carriers that provide interstate telecommunications services.[169] Section 254 states, however, that "[t]he Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis."[170] In section 254, Congress also provided the Commission with discretion to require "[a]ny other provider of interstate telecommunications" to contribute to universal service if the public interest so requires.[171]

65. *Discussion*. We seek comment on whether a connection-based assessment satisfies each element of the requirement in section 254(d) of the Act that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[172] First, we seek comment on whether the connection-based assessment methodology described above would be consistent with the requirement that providers of "*interstate* telecommunications services" contribute to universal service.[173] As the Commission previously has concluded, providers of connections to the public switched network are providers of interstate telecommunications services because end-user connections to the public switched network have an interstate component.[174] Therefore, under our current universal service rules, local exchange carriers contribute to universal service based in part on their subscriber line charges, which constitute interstate end-user telecommunications revenues. Likewise, connections provided by interexchange carriers, such as special access, may have an interstate component.[175] In addition, as evidenced by the

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mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. *Universal Service Order*, 12 FCC Rcd at 8801-03 paras. 46-51.

[167] *See* 47 U.S.C. § 153(44), (46).

[168] *See* 47 U.S.C. § 153(43).

[169] *See Universal Service Order*, 12 FCC Rcd at 9173 para. 777; *see also* 47 C.F.R. § 54.706.

[170] 47 U.S.C. § 254(d).

[171] *Id.*

[172] *Id.*

[173] *See id.* (emphasis added).

[174] *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 FCC 2d 241, 260-262 paras. 56-62 (1983), *aff'd in part, remanded in part Nat'l Ass'n of Regulatory Utility Commissioners v. Federal Communication Commission*, 737 F.2d 1095, 1111-1115 (1984), *cert. denied* 469 U.S. 1227 (1985).

[175] 47 C.F.R. § 36.154(a) (treating a special access or private line as interstate if interstate traffic constitutes more than 10 percent of the total traffic on the line).

regulatory structure established in section 332(c) of the Act,[176] wireless service providers offer telecommunications services that "by their nature operate without regard to state lines" and thus have an interstate component.[177] We therefore seek comment on whether it would be reasonable to conclude that, because the proposed definition of connection includes access to a public network, a wireless or wireline connection inherently contains an interstate component sufficient to satisfy this requirement of the Act.

66. Second, we seek comment on whether the connection-based assessment methodology described in this Further Notice would be consistent with the Act's requirement that "*every* telecommunications carrier that provides interstate telecommunications service shall contribute[.]"[178] It appears that the vast majority of telecommunications carriers that provide interstate telecommunications service also provide connections to a public network.[179] Interexchange carriers, for example, would contribute to the extent that they provide connections to a public network. Interexchange carriers act as connecting providers for certain multi-line business customers and would contribute for those connections. Interexchange carriers also may serve as competitive local exchange carriers and many do. We seek comment on this analysis. To the extent that providers of interstate telecommunications services, such as pure resellers of interexchange services, do not provide connections to a public network, we seek comment on whether to subject such carriers to a minimum contribution requirement and, if so, what a minimum contribution requirement would entail. Below, we also seek comment on whether such non-connection-based providers could be exempted from contributing under a revised *de minimis* exemption.[180]

67. Third, we seek comment on whether the connection-based assessment methodology described above would be "equitable and nondiscriminatory" for purposes of section 254(d).[181] In addition, we seek comment on whether such an approach would be consistent with the principle of competitive neutrality, which the Commission stated in the *Universal Service Order* would guide its determinations about both disbursements and contributions.[182] Under a connection-based assessment, all contributions would be based on the number and capacity of connections provided to end users. Contributors competing in the same market segments would be subject to equivalent contribution requirements. For example, two voice-grade connections provided by the same or different carriers would be subject to two assessments. In addition, a

[176] 47 U.S.C. § 332(c).

[177] *See* H.R. Rep. 103-111 at 260 (1993) (In adopting section 332(c)(3) Congress stated "[m]obile services, by their nature, operate without regard to state lines").

[178] 47 U.S.C. § 254(d) (emphasis added).

[179] *See, e.g.*, Edie Herman, *Competitors, Business Users Propose Special Access Standards*, COMMUNICATION DAILY, Jan. 23, 2002, at 1 (According to Verizon, long-distance companies, competitive local exchange carriers, incumbent local exchange carriers, competitive access providers (CAPs), and even end users themselves compete with one another to provide special access to end users.).

[180] *See infra* para. 68.

[181] 47 U.S.C. § 254(d). In *Texas Office of Public Utility Counsel v. FCC*, the Court of Appeals held that when analyzing whether a methodology is "equitable" we should consider the "fairness in the allocation of contribution duties." *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434.

[182] *Universal Service Order*, 12 FCC Rcd at 8802 para. 49.

connection-based assessment would not distinguish between particular classes of service providers or the technologies used in providing services.[183] A wireless connection and a wireline connection, for example, would be subject to the same assessment. Furthermore, because connections, rather than the services provided over such connections, would be assessed, this approach would not disadvantage providers of services that do not provide separate and independent connections to a public network. For example, if a customer purchases both a voice-grade connection and an information service, such as voice-mail or dial-up Internet access, only the voice-grade connection would be subject to a per-connection assessment. Such an information service would not be subject to a separate assessment regardless of whether it is provided by the carrier that also provides the voice-grade connection or is provided by an independent information service provider. This is because the information service does not provide access to a public network that is independent from the voice-grade connection.[184] In short, a connection-based assessment may mitigate any disparate treatment that could occur as a result of a contribution methodology based on the type of provider or service offering.[185] We seek comment on this analysis.

68. Section 254(d) provides the Commission authority to exempt carriers or classes of carriers if the carriers' telecommunications activities are limited to such an extent that their contribution would be *de minimis*.[186] Under section 54.708 of the Commission's rules, interstate telecommunications service providers whose annual universal service contributions are expected to be less than $10,000 are not required to contribute to the universal service mechanisms.[187] In support of its decision to adopt the *de minimis* exemption, the Commission reasoned that compliance costs associated with contributing to the universal service mechanisms should not exceed contribution amounts.[188] We seek comment on whether to establish a *de minimis* exemption should the Commission adopt the proposed methodology. We acknowledge, for example, that there are certain non-connection-based interstate telecommunications service providers, such as exclusive providers of pre-paid calling cards or dial-around services, that would not contribute under the proposed methodology. We seek comment on whether the level of contributions obtained from interstate telecommunications service providers that do not provide any connections to a public network would in fact be *de minimis* and in accordance with section 254(d) of the Act.[189] We also request comment on whether the administrative costs incurred by such non-connection-based providers likely would exceed current or future contribution amounts.

69. We also seek comment on the extent to which the proposed methodology would require the Commission to exercise its permissive authority over "other providers of interstate telecommunications" and, if so, whether exercise of such authority is warranted. In section 254,

[183] WorldCom Comments at 18.

[184] *See supra* para. 42.

[185] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434.

[186] 47 U.S.C. § 254(d).

[187] *See* 47 C.F.R. § 54.708.

[188] *See Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5465 para. 295 (1997).

[189] *See* 47 U.S.C. § 254(d); *supra* para. 64.

Congress provided the Commission with discretion to require "[a]ny other provider of interstate telecommunications" to contribute to universal service if the public interest so requires.[190] Providers of telecommunications include, for example, private service providers that offer service to others for a fee and payphone aggregators. The Commission has exercised this authority to require private service providers that offer interstate telecommunications to others for a fee and payphone aggregators to contribute to universal service.[191] Under a connection-based assessment, there may be instances in which a provider of connections to a public network is not a provider of interstate telecommunications services, but instead is a provider of interstate telecommunications.[192]

c. Potential Costs and Benefits of Connection-Based Assessment

70. We recognize that assessing contributions based on the number and capacity of connections provided to a public network represents a significant departure from the current methodology and therefore seek comment on the potential costs and benefits of connection-based assessment. We particularly seek comment from those states that have implemented a per-connection or per-line contribution methodology.[193]

71. Our examination of the record reveals a number of potential benefits to a connection-based assessment methodology. Because the number of connections historically has been more stable than interstate revenues, a connection-based assessment may provide a more predictable and sufficient funding source for universal service.[194] A connection-based assessment approach would not require carriers to distinguish between interstate and intrastate revenues, or telecommunications and non-telecommunications services, distinctions that do not apply easily or naturally outside of the traditional wireline context, and may become more and more difficult to apply as the marketplace evolves. Instead, any entity that provides an end user with a connection to a public network would be required to contribute to universal service. We seek comment on whether a connection-based assessment would ensure that contribution obligations are applied in a fair and predictable manner to all interstate telecommunications providers, and would safeguard the long-term viability of universal service. By making the assessment system more consistent with the current marketplace and more adaptable to future changes in the marketplace, a connection-based assessment may alleviate the need for interim "safe harbors" and other measures that ultimately could lead to uncertainty among interstate telecommunications providers and potentially distort the competitive marketplace.

72. A connection-based assessment also may increase the overall efficiency of the contribution assessment system by making only one provider responsible for contributing based on a single connection. Under the existing system, consumers pay contribution recovery fees to

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[190] 47 U.S.C. § 254(d).

[191] *See* 47 C.F.R. § 54.706(c); *see also Universal Service Order*, 12 FCC Rcd at 9183-84 paras. 794-96.

[192] The Commission has sought comment in a companion proceeding on whether facilities-based broadband Internet access providers should be required to contribute to support universal service and, if so, on what legal basis. *See Broadband NPRM*, FCC 02-42 at paras. 64-83; *see also Report to Congress*, 13 FCC Rcd at 11532 para. 69 (discussing Commission's permissive authority over providers of telecommunications).

[193] For example, Arizona, Idaho, and Kentucky have systems that incorporate a per-line assessment.

[194] *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, December 2000, Table 17.1 (subscribership); *see also supra* para. 8.

multiple providers, regardless of how many connections or lines they purchase. For example, such fees generally appear on both local and long distance bills for the same line. By making only one provider responsible for contributing based on a single connection, a connection-based assessment may increase the efficiency of the recovery process. In addition, because the connecting provider is an entity that has a more direct relationship with the end user, it should be in a better position than other providers to identify the assessable connections. As a result, such a proposal could reduce the total amount that most consumers currently pay in contribution recovery fees. A connection-based system also may eliminate some of the complexity involved with these fees, making the contribution recovery process more understandable. We seek comment on these potential benefits.

73. We also seek comment on the potential costs of adopting a connection-based assessment, and how such costs should be balanced against the potential benefits. A connection-based assessment could, for example, result in increased contribution obligations for certain industry segments. Above, we seek comment on whether minimizing the reallocation of contribution obligations among industry segments should be a goal in moving to a per-connection assessment system.[195] A connection-based assessment also could result in increased contribution obligations for connections provided to certain categories of customers (for example, for connections provided to certain low-volume users).[196] In addition, a connection-based assessment would result in modified reporting obligations for contributors.[197] Finally, adoption of a per-connection assessment potentially could lead to a new set of definitional challenges as the marketplace evolves in the future. We seek comment on the potential costs associated with such effects, whether they outweigh the potential benefits of a connection-based assessment, and to what extent other policy measures might mitigate these costs.

d. Implementation Issues

74. <u>Accounting for Growth</u>. Under the existing revenue-based assessment system, the contribution factor changes each quarter to reflect increases or decreases in reported revenues and total universal service funding requirements. We seek comment on how to address growth in the number and capacity of connections and/or funding requirements in the event that we adopt a connection-based assessment system. In particular, we request comment on whether the proposed flat assessment rates on residential, single-line business, and mobile wireless connections should be adjusted periodically for increases or decreases in connections and/or funding requirements. Based on projections provided by commenters to the *2001 Notice*, the number of connections is expected to increase for the foreseeable future.[198] Therefore, if we were not to adjust the proposed flat assessment rates for residential, single-line business, and mobile wireless connections, the overall proportion of universal service funding requirements met by assessments on such connections might increase over time, with a corresponding decrease in the residual proportion met by assessments on multi-line business connections.[199]

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[195] *See supra* para. 59.

[196] *See supra* para. 49.

[197] *See infra* paras. 76-79.

[198] *Verizon Ex Parte*; AT&T Comments at 13.

[199] *USF Coalition Ex Parte*.

75. We invite commenters to suggest methods for implementing any proposed adjustments to the proposed flat assessment rates for residential, single-line business, and mobile wireless connections. We also seek comment on how frequently any such adjustments should be made. For example, if the total number of connections and capacity units were to increase three percent in a given year and the universal service funding requirement were to stay the same, the proposed $1.00 flat assessment rate for residential, single-line business, and mobile wireless connections (excluding pagers), as well as the proposed $0.25 flat rate for pagers, likewise could be decreased by three percent.[200] We also seek comment on how to account for the possibility of different growth rates for different types of connections. If, for example, the total number of connections and capacity units were to increase three percent in a given year, with a growth rate of five percent for residential, single-line business, and mobile wireless connections and of two and one-half percent for multi-line business connections, the per-unit assessment rate for all connections would decrease, but the overall proportion of universal service funding requirements met by multi-line business connections would decrease slightly, whereas the proportion met by residential, single-line business, and mobile wireless connections would increase slightly.[201] We invite commenters to suggest alternative methodologies to account for increases or decreases in the number and capacity of connections and/or funding requirements.

76. Reporting Requirements. We seek comment on how often contributors should report the number and capacity of their connections under a connection-based assessment methodology. Below, we seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis. We also invite commenters to propose alternative reporting requirements under a connection-based assessment. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act.

77. Contributors currently report their gross-billed interstate end-user telecommunications revenues five times per year -- on a quarterly basis on the Form 499-Q and on an annual basis on the Form 499-A. Contributors are billed for their universal service contribution obligations on a monthly basis. On the Form 499-Q, contributors report gross-billed revenues from the prior quarter and are assessed on those revenues in the next quarter. Under the current system, there is a six-month interval between the accrual of revenues and assessment based on those revenues. Revenues reported on the Form 499-A are used to perform true-ups to account for discrepancies between an individual contributor's annual and quarterly revenue data and to determine assessments for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.

[200] Excluding pagers for purposes of this example, assume that there are 250 million residential, single-line business, and mobile wireless connections assessed at $1.00 per connection, a residual funding requirement of $4 billion, and 1 billion units of multi-line business capacity, so that the base factor for multi-line business units is $4.00. In addition, assume a total connection growth rate of 3%, and that the total funding requirement stays the same. The assessment rate for residential, single-line business, and mobile wireless connections would be decreased to $0.97. Assuming that multi-line business connections increased at the same 3% rate as residential, single-line business, and mobile wireless connections, the base factor for multi-line business connections likewise would decrease to approximately $3.88.

[201] Building on the example above, a total of 262,500,000 residential, single-line business, and mobile wireless connections would be assessed $1.95 per connection or a total of $254,625,000, and a total of 1.025 billion multi-line business capacity units would be assessed a residual funding requirement of $3,995,375,000, with the base factor decreasing to approximately $3.90. *See supra* n. 200.

78. We seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis. We specifically seek comment on the operation of a monthly reporting system. Under this approach, contributors could report the number and capacity of their connections on a monthly basis on a new Form 499-M, which the contributor would use to calculate its contribution amount as of the last day of the prior month. Each month contributors would receive a fill-in-the-blank bill from USAC and would remit their contribution based on the number and capacity of their end-user connections in service as of the end of the prior month. Therefore, the new Form 499-M would serve both as a contributor's monthly bill and its reporting obligation. The Commission would announce the per-connection multipliers for multi-line business connections prior to each quarter and those multipliers would appear each quarter on an updated, downloadable form that would appear on USAC's website.[202] The Commission also would periodically announce adjustments to the per-connection assessment for residential, single-line business, and mobile wireless connections if necessary to reflect, for example, increases or decreases in the number and capacity of connections.[203] The Commission would use the data submitted on a monthly basis when determining the base factor for determining multi-line business assessments for the upcoming quarter. Assuming that contributors would continue reporting revenues on an annual basis for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs, this approach would result in contributors submitting thirteen filings per year.

79. We seek comment on the costs and benefits of a monthly reporting obligation. Monthly reporting would almost entirely eliminate the current six-month interval between reporting and assessment. This would address concerns that the current six-month interval between the accrual of revenues and the assessment of contributions based on those revenues creates competitive advantages for contributors with increasing interstate telecommunications revenues, while disadvantaging those with declining revenues. Although contributors would have to report more frequently under a monthly reporting requirement than under the current system, their overall reporting burdens may be significantly reduced because they would only be required to report the number and capacity of the connections they provide, rather than their interstate telecommunications revenues. In addition, a contributor's reporting obligation and its bill would be combined. We also note that several states with universal service programs currently provide for monthly reporting.[204]

80. The increased prevalence of customer migration between contributors, or "churn," is another reason for proposing to require contributors to report on a monthly basis. As competition for telecommunication services increases, customer churn is likely to occur more often, as evidenced by the increasingly high churn rates experienced by interexchange carriers over the last two decades.[205] We seek comment on how to address customer churn that occurs within a given month. No commenters proposed a method for addressing this issue in the record to the *2001 Notice*. We seek comment, for example, on a proposal to simply assess contributors

[202] For example, in early June, the Commission would announce the per-connection multipliers for the third calendar quarter. On August 15, carriers would remit contributions based on connections at the end of July.

[203] *See supra* paras. 74-75.

[204] *See* <http://www.necaservices.com/content/stfund.htm#top>. States include Arizona, Kentucky, and Oklahoma.

[205] *Trends Report 2000,* Tables 10.1- 10.16.

for connections they have as of the last day of the prior month. We also seek comment on other possible ways of addressing this issue.

81. In the event that we adopt a monthly reporting requirement that combines a contributor's monthly bill and reporting obligation, we seek comment on whether a reserve fund should be established. A reserve fund would be established to protect against occasional shortfalls in universal service funding. As discussed above, the number and capacity of connections historically has been more stable than revenues and is projected to grow in the foreseeable future.[206] Therefore, a reserve fund may not be necessary under a connection-based assessment.[207] We seek comment on this analysis.

82. As discussed above, the revenue information currently reported on an annual basis in FCC Form 499-A also is used for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.[208] These three programs rely on similar revenue classifications as the existing universal service methodology. For example, revenues reported for purposes of assessments for Telecommunications Relay Services are interstate end-user telecommunications revenues.[209] The Commission has discretion under the Act to recover costs associated with these programs in any reasonable manner.[210] Both the Local Number Portability and North American Numbering Plan programs provide the Commission discretion in establishing the funding mechanism, with the main requirement being that the Commission does so in a competitively-neutral manner.[211] The Telecommunications Relay Services program requires the Commission to recover the costs associated with providing such services on a cost-causative basis.[212] We therefore seek comment on the appropriate revenue information that should be reported on a revised Form 499-A in the event that we adopt a connection-based assessment system. Should contributors continue reporting interstate gross-billed end-user telecommunications revenues on an annual basis? In addition, we seek comment on the potential administrative and financial impact of reporting such other information in addition to connection/capacity information. We also seek comment on alternative ways to calculate contributions for these programs. We seek comment, for example, on having contributors report types of revenue information they currently report to other government agencies, such as the Securities and Exchange Commission (SEC), thereby lessening the burden of reporting information on the Form 499-A separately in addition to information submitted on the proposed 499-M. We seek comment on whether the types of information reported to the SEC and other government agencies would be appropriate for determining

[206] *See supra* paras. 71, 74-75.

[207] By contrast, a reserve fund would need to be established under a current revenue-based assessment. *See infra* para. 87.

[208] *See 2001 Notice*, 16 FCC Rcd at 9909 para. 38. Carriers currently report this information on the FCC Form 499-A.

[209] *See* 47 C.F.R. § 64.604(c)(iii)(A). Both the Local Number Portability and the North American Numbering Plan also rely on end-user telecommunications revenues, but do not distinguish between interstate and intrastate. *See* 47 C.F.R. §§ 52.17, 52.32.

[210] *See* 47 U.S.C. §§ 225(b)(2), 251(e)(2).

[211] *See id.* at § 251(e).

[212] *See id.* at §§ 225(b)(2). If costs, therefore, are caused by interstate telecommunications relay services, then such costs shall be recovered from the interstate jurisdiction.

assessments to the above programs. We also seek comment on how contributors that do not report to the SEC and other government agencies would report under these programs. Alternatively, we seek comment on possibly including the costs of these programs in a per-connection fee should we ultimately decide to adopt a connection-based assessment system. Commenters should address whether changes in information submitted would be inconsistent with any statutory or other requirements for these non-universal service programs.

83. _Transition_. As discussed above, a connection-based methodology would constitute a significant change from the current system. In the event that we adopt a connection-based assessment, we seek comment on whether it can be implemented immediately, or whether a transition period would be necessary. In this regard, the USF Coalition proposed a 12-month transition period for implementation of a connection-based assessment for multi-line business connections, but proposed to implement immediately a $1.00 per-connection assessment for residential, single-line business, and mobile wireless connections (excluding pagers), and a $0.25 per-connection assessment for pagers.[213] Should we employ a transition period for implementing part or all of a connection-based assessment? During such a transition period, contributors could be required to continue reporting revenue data and contributing based on the current system,[214] while also reporting data based on the new methodology. A transition period may delay realization of the potential benefits of a new, connection-based approach, and temporarily increase administrative burdens by imposing dual reporting requirements. On the other hand, it might enable contributors and USAC to prepare for implementation of the new mechanism.[215] A transition period also may provide additional time for contributors to update their billing and accounting systems to accommodate changes.[216] If we conclude that a transition period is necessary, we seek comment on the appropriate length of the transition and on how to phase in the proposed methodology over the transition period.[217]

2. Revenue-Based Assessment

84. In the *2001 Notice*, we sought broad comment on whether to retain or modify the existing revenue-based assessment system.[218] The *2001 Notice* generated a significant record on this issue, with some commenters advocating retention of the existing system, and others proposing various modifications, including reliance on current or projected revenues rather than historical revenues, as well as assessment on collected or net-booked revenues rather than gross-billed revenues.[219] All of these proposals remain under consideration, and we invite commenters to supplement the record with any new arguments or data regarding them. Commenters are invited to address the relative costs and burdens on different industry segments of retaining or modifying the current system. We also invite comment on whether proposals to retain or modify

[213] *See USF Coalition Ex Parte.*

[214] EPIK Comments at 6; USAC Comments at 27.

[215] *Id.*

[216] WorldCom Comments at 21.

[217] BTNA Comments at 6-7; SBC Comments at 9; AOL/Time-Warner Reply Comments at 4; WorldCom Reply Comments at 24.

[218] *See 2001 Notice*, 16 FCC Rcd at 9905-06.

[219] *See supra* n.4.